

Senate File 357 - Introduced

SENATE FILE 357
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 14)

A BILL FOR

1 An Act creating a capital murder offense by establishing the
2 penalty of death for murder in the first degree offenses
3 involving kidnapping and sexual abuse offenses against
4 the same victim who is a minor, providing penalties, and
5 including effective date and applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, Code 2023, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6A. The state public defender shall perform
4 all of the following duties with respect to the appointment of
5 counsel for indigent persons in cases in which a sentence of
6 death may be or is to be imposed:

7 a. Provide or contract with attorneys for appointment as
8 lead counsel and co-counsel to provide legal services in cases
9 where a person is charged with capital murder under section
10 902.15, and the state has given notice of intent to seek the
11 death penalty or in cases in which a sentence of death is to be
12 imposed.

13 b. Conduct or sponsor specialized training programs for
14 attorneys representing persons who may be executed.

15 Sec. 2. NEW SECTION. 602.1012 **Qualifications of counsel**
16 **in capital murder cases.**

17 The supreme court shall prescribe rules which establish
18 minimum standards and procedures by which attorneys may become
19 qualified to provide legal services as lead counsel in cases in
20 which a sentence of death may be or is to be imposed.

21 Sec. 3. NEW SECTION. 812A.1 **Procedure to determine sanity**
22 **of condemned inmate.**

23 1. At any time prior to the execution of an inmate
24 under section 902.1A, if the director of the department of
25 corrections or the counsel for a person who is under a sentence
26 of execution has cause to believe that the inmate is suffering
27 from a mental illness as to prevent the defendant from knowing
28 the nature and quality of the act the defendant has been
29 convicted of, or from understanding that trial on the offense
30 has taken place and that execution proceedings are about to
31 take place, or to otherwise cause the defendant to lack the
32 capacity to understand the sentence which has been imposed
33 and to participate in any legal proceedings relating to the
34 sentence, the director or counsel may file a request with the
35 court that issued the warrant for execution for a determination

1 of the inmate's sanity. If the court determines that there is
2 not sufficient reason to believe that the inmate is mentally
3 ill, the court shall enter an order denying the request and
4 shall state the grounds for denying the request. If the court
5 believes that there is sufficient reason to believe that the
6 inmate is mentally ill, the court shall suspend the execution
7 and conduct a hearing to determine the sanity of the inmate.

8 2. At the hearing, the court shall determine the issue of
9 the inmate's sanity. Prior to the hearing, the court shall
10 appoint two licensed physicians or licensed psychologists, or
11 one licensed physician and one licensed psychologist, who are
12 qualified by training and practice, for purposes of conducting
13 a psychiatric or psychological examination of the inmate. The
14 physicians or psychologists shall examine the inmate and report
15 any findings in writing to the court within ten days after
16 the order of examination is issued. The inmate shall have
17 the right to present evidence and cross-examine any witnesses
18 at the hearing. Any statement made by the inmate during the
19 course of any examination provided for in this section, whether
20 or not the inmate consents to the examination, shall not be
21 admitted into evidence against the inmate in any criminal
22 proceeding for purposes other than a determination of the
23 inmate's sanity.

24 3. If, at the conclusion of a hearing held pursuant to this
25 section, the court determines that the inmate is in good mental
26 health, the court shall enter an order setting a date for the
27 inmate's execution, which shall be carried into effect in the
28 same manner as provided in the original sentence. A copy of
29 the order shall be sent to the director of the department of
30 corrections and the governor.

31 4. If, at the conclusion of a hearing held pursuant to this
32 section, the court determines that the inmate is mentally ill,
33 the court shall suspend the execution until further order.
34 At any time after issuance of the order, if the court has
35 sufficient reason to believe that the inmate is in good mental

1 health, the court shall again determine the sanity of the
2 inmate as provided by this section.

3 Sec. 4. NEW SECTION. 814.30 Review of capital murder death
4 sentence.

5 1. In a case in which a sentence of death is imposed, the
6 supreme court shall automatically review the judgment and
7 sentence. The court's review of the case shall be de novo. The
8 case shall not be transferred to the court of appeals.

9 2. A review by the supreme court of a judgment and sentence
10 imposing the punishment of death has priority over all other
11 criminal and other actions pending before the supreme court.

12 3. The supreme court shall review the trial and judgment,
13 and shall separately review the sentencing proceeding. Upon
14 determining that errors did not occur at the trial requiring
15 reversal or modification of the judgment, the supreme court
16 shall proceed to determine if the sentence of death is lawfully
17 imposed. In its review of the sentencing proceeding, the
18 supreme court shall determine all of the following:

19 a. Whether the sentence of death was imposed capriciously or
20 under the influence of prejudice or any other arbitrary factor.

21 b. Whether the special verdicts returned under section
22 901E.1 are supported by the evidence.

23 c. Whether the sentence of death is excessive or
24 disproportionate to the penalty imposed in similar cases,
25 considering both the crime and the defendant.

26 4. If the supreme court determines that the sentence of
27 death was not lawfully imposed, the supreme court shall set
28 aside the sentence and shall remand the case to the trial
29 court for a second sentencing proceeding to determine if the
30 imposition of death is warranted.

31 5. If the supreme court affirms the judgment and sentence
32 of death, the clerk of the supreme court shall certify the
33 judgment of the supreme court under the seal of the supreme
34 court to the clerk of the trial court.

35 Sec. 5. Section 815.10, Code 2023, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 1A. If two attorneys have not already been
 3 appointed pursuant to subsection 1, the court shall appoint,
 4 for each indigent person who is charged with capital murder
 5 under section 902.15, and in which a notice of intent to
 6 seek the death penalty has been filed, two attorneys who are
 7 qualified under section 602.10112 to represent the person in
 8 the proceedings and in all state legal proceedings which take
 9 place from the time the person is indicted or arraigned until
 10 the person is sentenced on the charge. In addition, if at
 11 any point in federal postconviction proceedings an indigent
 12 person is not afforded court-appointed counsel, the state shall
 13 provide counsel to the person to present any claims determined
 14 meritorious by the federal court if the person is not otherwise
 15 represented by legal counsel. Only private attorneys and
 16 public defenders who are qualified to provide representation in
 17 cases in which the death penalty may be imposed are eligible
 18 for appointment or assignment to a case in which the death
 19 penalty may be imposed.

20 Sec. 6. NEW SECTION. 901E.1 Capital murder proceedings —
 21 request for death penalty — penalty proceedings.

22 1. As used in this section:

23 a. "*Intellectually disabled*" means the same as defined in
 24 section 902.15.

25 b. "*Mentally ill*" or "*mental illness*" means the same as
 26 defined in section 902.15.

27 2. If a notice of intent to seek the death penalty has been
 28 filed, objections to the imposition of the death penalty based
 29 upon allegations that a defendant was intellectually disabled
 30 or mentally ill at the time of the commission of the offense
 31 shall be raised within the time provided for the filing of
 32 pretrial motions under rule of criminal procedure 2.11. The
 33 court may, for good cause shown, allow late filing of the
 34 motion. Hearing on the motion shall be held prior to trial
 35 and the burden of proof shall be on the defendant to prove

1 intellectual disability or mental illness by a preponderance
2 of the evidence. If the court finds that the defendant is
3 intellectually disabled, the defendant, if convicted of capital
4 murder under section 902.15, shall not be sentenced to death
5 but shall be sentenced to life imprisonment in the manner
6 provided in section 902.1. A finding by the court that the
7 evidence presented by the defendant at the hearing does not
8 preclude the imposition of the death penalty under this section
9 and section 902.15 shall not preclude the introduction of
10 evidence of intellectual disability or mental illness during
11 the penalty proceeding. If the court finds that evidence of
12 intellectual disability or mental illness does not preclude
13 imposition of the death penalty, evidence of intellectual
14 disability or mental illness may be reviewed by the jury in
15 the penalty proceeding and the jury shall not be informed of
16 the finding in the initial proceeding at any time during the
17 penalty proceeding.

18 3. If at the trial on a charge of capital murder under
19 section 902.15, the state intends to request that the death
20 penalty be imposed under section 902.1A, the prosecutor shall
21 file a notice of intent to seek the death penalty, at the time
22 of and as part of the information or indictment filed in the
23 case.

24 4. If a notice of intent to seek the death penalty has been
25 filed, the trial shall be conducted in bifurcated proceedings
26 before the same trier of fact. During the initial proceeding,
27 the jury, or the court if the defendant waives the right to a
28 jury trial, shall decide only whether the defendant is guilty
29 or not guilty of capital murder under section 902.15.

30 a. If, in the initial proceeding, the court or jury finds
31 the defendant guilty of, or the defendant pleads guilty to,
32 an offense other than capital murder under section 902.15,
33 the court shall sentence the defendant in accordance with the
34 sentencing procedures set forth in rule of criminal procedure
35 2.23, Iowa court rules, and chapters 901 through 909, which are

1 applicable to the offense.

2 *b.* If the court or jury finds the defendant guilty of, or
3 the defendant pleads guilty to, capital murder under section
4 902.15, but the prosecuting attorney waives the death penalty,
5 the court shall sentence the defendant to life imprisonment in
6 accordance with the sentencing procedures set forth in rule of
7 criminal procedure 2.23, and chapters 901 through 909, which
8 are otherwise applicable to convictions of murder in the first
9 degree.

10 *c.* If the court or jury finds the defendant guilty of
11 capital murder under section 902.15, or a defendant enters a
12 plea of guilty in the initial proceeding, and the prosecuting
13 attorney does not waive imposition of the death penalty, a
14 penalty proceeding shall be held in the manner provided in
15 subsections 5 through 13.

16 5. No sooner than twenty-four hours after a verdict of
17 guilty or a plea of guilty to capital murder under section
18 902.15 is returned in the initial proceeding, a penalty
19 proceeding shall be held to determine whether the defendant
20 shall be sentenced to death or to life imprisonment. The
21 proceeding shall be conducted in the trial court before the
22 trial jury, or before the court if the defendant has waived
23 the right to a jury trial or has waived the right for the
24 proceeding to be before the trial jury. Both the state and the
25 defendant shall have the right to present opening statements
26 at the commencement of the proceeding. In the proceeding,
27 evidence relevant to the existence of any aggravating or
28 mitigating circumstances may be presented as follows:

29 *a.* The state or the defendant may present evidence relevant
30 to the conviction of capital murder under section 902.15 and
31 any aggravating circumstances other than juvenile delinquency
32 adjudications for offenses which carry penalties equivalent to
33 the penalties imposed for simple or serious misdemeanors. The
34 state may introduce evidence of the actual harm caused by the
35 commission of the capital murder offense under section 902.15,

1 including but not limited to evidence relating to the life of
2 the victim and the impact of the loss of the victim to the
3 victim's family and society.

4 *b.* The defendant may present evidence that the defendant
5 was intellectually disabled or mentally ill at the time of the
6 commission of the offense. The burden of proof shall be on the
7 defendant to prove intellectual disability or mental illness by
8 a preponderance of the evidence.

9 *c.* The state or the defendant may present evidence relevant
10 to any mitigating circumstances which may exist. Mitigating
11 circumstances may include the following circumstances:

12 (1) The defendant was under the influence of a mental
13 illness insufficient to constitute a defense.

14 (2) The age of the defendant at the time of the offense.

15 (3) The defendant's capacity to appreciate the wrongfulness
16 of the defendant's conduct and to conform that conduct to the
17 requirements of law was significantly impaired as a result of a
18 mental illness or intellectual disability, but not to a degree
19 sufficient to constitute a defense.

20 (4) The defendant has no significant history of prior adult
21 criminal activity.

22 (5) The defendant acted under extreme duress or under the
23 substantial domination of another person.

24 (6) The defendant did not directly commit the capital murder
25 offense and the defendant did not intend to kill or anticipate
26 that lethal force would be used.

27 (7) Any other factor which is relevant to the defendant's
28 character or record or to the circumstances of the offense.

29 *d.* The state and the defendant or the defendant's counsel
30 shall be permitted to present and cross-examine witnesses and
31 present arguments for or against a sentence of death. Evidence
32 regarding aggravating and mitigating circumstances shall not
33 be governed by the rules governing admissibility of evidence,
34 except that introduction of evidence secured in violation of
35 the Constitution of the United States or of the Constitution of

1 the State of Iowa shall not be permitted.

2 6. At the conclusion of presentation of evidence in
3 the penalty proceeding, the state and the defendant or the
4 defendant's counsel shall be permitted to make closing
5 arguments, including any rebuttal arguments, in the same manner
6 as in the initial proceeding, and the following issues shall be
7 determined by the jury or by the court if there is no jury:

8 a. Whether the aggravating circumstance or circumstances
9 have been established beyond a reasonable doubt and outweigh
10 any one or more mitigating circumstances.

11 b. Whether the defendant shall be sentenced to death.

12 7. A recommendation for a sentence of death shall not be
13 permitted if the recommendation is based on the race, color,
14 religious beliefs, national origin, or sex of the defendant
15 or of any victim, or based on any other protected class under
16 chapter 216. After submission of the issues, but prior to the
17 return of a finding in the penalty proceeding, if the matter
18 is tried before a jury, the court shall instruct the jury
19 that in considering whether a sentence of death is justified,
20 the jury shall not consider race, color, religious beliefs,
21 national origin, or sex of the defendant or of any victim, or
22 consider any other protected class under chapter 216. The
23 court shall further instruct the jury that the jury shall not
24 return a sentence of death unless the jury concludes that such
25 a sentence would be recommended no matter what the race, color,
26 religious beliefs, national origin, sex, or other protected
27 class of the defendant or of any victim may be.

28 8. After submission of the issues, but prior to the
29 commencement of the jury deliberations in the penalty
30 proceeding, the court shall instruct the jury that if the
31 defendant is not sentenced to death, the court is required by
32 law to impose a sentence of imprisonment until death without
33 parole. The court shall further instruct the jury that
34 the sentence of imprisonment until death without parole is
35 required by law if the jury fails to reach a unanimous verdict

1 recommending a sentence of death.

2 9. Concurrently with the return of the findings on the
3 issues submitted under subsection 6, the jury, or the court if
4 there is no jury, shall return special verdicts as follows:

5 a. Which aggravating circumstances were established beyond a
6 reasonable doubt and were considered in reaching the verdict.

7 b. Which mitigating circumstances were established and
8 were considered in reaching the verdict returned on the issue
9 specified in subsection 6, paragraph "a".

10 10. If the jury, or the court if there is no jury,
11 returns a unanimous affirmative finding on each of the issues
12 submitted under subsection 6, the court shall enter a judgment
13 of conviction and shall sentence the defendant to death as
14 provided in section 902.1A.

15 11. However, if evidence that the defendant was not a
16 major participant in the commission of the capital murder
17 under section 902.15, and that the defendant's conduct did not
18 manifest a reckless indifference to human life is presented
19 to the jury, or to the court if there is no jury, the jury or
20 the court shall also return a special verdict on the issue.
21 If the jury unanimously determines, or the court if there is
22 no jury, determines that a preponderance of evidence exists
23 that shows that the defendant was not a major participant in
24 the commission of the capital murder under section 902.15,
25 and that the defendant's conduct did not manifest a reckless
26 indifference to human life, the court shall enter a judgment
27 of conviction and shall sentence the defendant to life
28 imprisonment as provided in section 902.1, even if the jury or
29 the court returns unanimous affirmative findings on each of the
30 issues submitted under subsection 6.

31 12. If the jury, or the court if there is no jury, returns
32 a negative finding on any of the issues submitted under
33 subsection 6, the court shall enter a judgment of conviction
34 and shall sentence the defendant to life imprisonment as
35 provided in section 902.1.

1 13. After a verdict has been rendered, it shall be recorded
 2 on the jury verdict form and shall be read and recorded in open
 3 court. The jurors shall be collectively asked by the court
 4 whether the verdict returned is their true and correct verdict.
 5 Even though no juror makes any declaration to the contrary, the
 6 jury shall, if either party so requests, be polled and each
 7 juror shall be separately asked whether the verdict rendered by
 8 the jury foreperson is the juror's true and correct verdict.
 9 If, upon either the collective or the separate inquiry, any
 10 juror denies that the verdict is the juror's verdict, the court
 11 shall refuse to accept the verdict. The court may direct
 12 inquiry or permit inquiry by counsel to ascertain whether any
 13 juror has been subjected to coercion or has become confused
 14 during the jury deliberation process. The court may, as
 15 appropriate, direct the jury to resume deliberation in the
 16 case. If no disagreement on the verdict is expressed by any of
 17 the jurors, the court shall discharge the jury.

18 Sec. 7. Section 902.1, subsection 1, Code 2023, is amended
 19 to read as follows:

20 1. ~~Upon~~ Except as provided in section 902.1A, a plea of
 21 guilty, a verdict of guilty, or a special verdict upon which a
 22 judgment of conviction of a class "A" felony may be rendered,
 23 the court shall enter a judgment of conviction and shall commit
 24 the defendant into the custody of the director of the Iowa
 25 department of corrections for the rest of the defendant's
 26 life. Nothing in the Iowa corrections code pertaining to
 27 deferred judgment, deferred sentence, suspended sentence, or
 28 reconsideration of sentence applies to a class "A" felony, and
 29 a person convicted of a class "A" felony shall not be released
 30 on parole unless the governor commutes the sentence to a term
 31 of years.

32 Sec. 8. NEW SECTION. **902.1A Capital murder — death**
 33 **penalty.**

34 1. For the purposes of this section, "*lethal injection*"
 35 means a continuous intravenous injection of a lethal substance

1 sufficient to cause death.

2 2. Notwithstanding section 902.1, upon return of a plea
3 or verdict of guilty to capital murder under section 902.15,
4 and a return of a verdict in favor of a sentence of death in
5 a penalty proceeding conducted as provided in section 901E.1,
6 the court shall enter a judgment of conviction and shall commit
7 the defendant into the custody of the director of the Iowa
8 department of corrections. The sentence shall be carried out
9 by the administration of a lethal injection pursuant to rules
10 adopted by the board of corrections. If a defendant, for whom
11 a warrant of execution is issued, is pregnant, the execution
12 shall not take place until after the defendant is no longer
13 pregnant. If a defendant, for whom a warrant of execution
14 is issued, is suffering from a mental illness as to prevent
15 the defendant from knowing the nature and quality of the act
16 the defendant has been convicted of, or from understanding
17 that trial on the offense has taken place and that execution
18 proceedings are about to take place, or to otherwise cause the
19 defendant to lack the capacity to understand the sentence which
20 has been imposed and to participate in any legal proceedings
21 relating to the sentence, the execution shall not take place
22 until after the defendant's capacity is restored. If the
23 director of the department of corrections or the defendant's
24 counsel files a request with the court which issued the warrant
25 of execution alleging that the defendant suffers from a mental
26 illness, a hearing on the matter shall be held in the manner
27 provided in section 812A.1.

28 Sec. 9. NEW SECTION. 902.15 Capital murder.

29 1. As used in this section:

30 a. "*Capital murder*" means any murder that makes a person
31 eligible for the death penalty.

32 b. "*Eligible for the death penalty*" means when a person
33 is convicted of the multiple offenses of murder in the first
34 degree in violation of section 707.2, kidnapping in violation
35 of section 710.2, 710.3, or 710.4, or sexual abuse in violation

1 of section 709.2, 709.3, 709.4, or 709.4A with respect to the
2 same victim, and the victim is a minor.

3 *c. "Intellectually disabled"* means significant subaverage
4 general intellectual functioning accompanied by significant
5 deficits or impairments in adaptive functioning manifested in
6 the developmental period, but no later than the age of eighteen
7 years, and accompanied by deficits in adaptive behavior.

8 *d. "Mentally ill" or "mental illness"* means the condition
9 of a person who is suffering from a chronic and persistent
10 serious mental disease or disorder and who, by reason of that
11 condition, lacks sufficient judgment to make responsible
12 decisions regarding treatment and is reasonably likely to
13 injure the person's self or others who may come into contact
14 with the person if the person is allowed to remain at liberty
15 without treatment.

16 *e. "Minor"* means a person under eighteen years of age.

17 2. A person who commits capital murder, who is eligible
18 for the death penalty, who is not intellectually disabled or
19 mentally ill, and who is age eighteen or older at the time of
20 the capital murder, shall be subject to a sentence of death
21 under section 902.1A.

22 Sec. 10. NEW SECTION. 902.16 Data collection for capital
23 murder — death penalty.

24 1. The supreme court shall collect data on all capital
25 murder charges in which the death penalty is or was not waived
26 which are filed and processed in the courts in this state.
27 This data may be used by the supreme court to determine whether
28 death sentences imposed are excessive or disproportionate, or
29 under the influence of prejudice under section 814.28. The
30 court shall make this data available to litigants in death
31 penalty cases.

32 2. Data collected by public officials concerning factors
33 relevant to the imposition of the death sentence shall be made
34 publicly available.

35 Sec. 11. NEW SECTION. 903C.1 Executions — refusal to

1 **perform.**

2 An employee of the state who may lawfully perform, assist, or
 3 participate in the execution of a person pursuant to section
 4 902.1A, and rules adopted by the department of corrections,
 5 shall not be required to perform, assist, or participate in
 6 the execution. State employees who refuse to perform, assist,
 7 or participate in the execution of a person shall not be
 8 discriminated against in any way, including but not limited
 9 to employment, promotion, advancement, transfer, licensing,
 10 education, training, or the granting of any privileges or
 11 appointments because of the refusal to perform, assist, or
 12 participate in the execution.

13 Sec. 12. Section 904.105, Code 2023, is amended by adding
 14 the following new subsection:

15 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
 16 pertaining to executions of persons convicted of capital murder
 17 under section 902.15. Rules adopted shall include but are not
 18 limited to rules permitting the witnessing of executions by
 19 members of the public and the victim's family. Invitations
 20 to witness an execution shall at least be extended to the
 21 following representatives of the news media:

22 a. A representative from a wire service serving Iowa.

23 b. A representative from a broadcasting network serving
 24 Iowa.

25 c. A representative from a television station located in
 26 Iowa.

27 d. A representative from a radio station located in Iowa.

28 e. A representative from a daily newspaper published in
 29 Iowa.

30 f. A representative from a weekly newspaper published in
 31 Iowa.

32 g. A representative from the news media from the community
 33 in which the condemned person resided, if that community is
 34 located in Iowa.

35 Sec. 13. IMPLEMENTATION OF ACT. Section 25B.2, subsection

1 3, shall not apply to this Act.

2 Sec. 14. SEVERABILITY. If any provision of this Act or the
3 application thereof to any person is invalid, the invalidity
4 shall not affect the provisions or application of this Act
5 which can be given effect without the invalid provisions or
6 application and to this end, the provisions of this Act are
7 severable.

8 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,
9 2024.

10 Sec. 16. APPLICABILITY. This Act applies to offenses
11 committed on or after the effective date of this Act.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill amends the Iowa criminal code to provide for
16 punishment by death for capital murder committed by a person
17 age 18 or older if the trial jury, or the judge if there
18 is no jury, makes specific findings and whether the jury
19 believes the defendant should be put to death in a separate
20 penalty proceeding held after the close of the initial trial
21 proceeding.

22 Under the bill, a death penalty sentence could be imposed
23 if the person is convicted of the multiple offenses of murder
24 in the first degree, kidnapping in the first, second, or third
25 degree, and sexual abuse in the first, second, or third degree
26 with respect to the same victim, and the victim is a minor.

27 The bill provides that in order to receive a sentence of
28 death, the defendant must be at least 18 years of age at the
29 time the murder in the first degree was committed, must not be
30 mentally ill or intellectually disabled, and must have been a
31 major participant in the commission of the crime or must have
32 shown a manifest indifference to human life.

33 If a person is indigent and is charged with capital murder,
34 payment of costs for two attorneys is authorized. The supreme
35 court is required to establish standards for the competency

1 of counsel in death penalty cases. The state public defender
2 is charged with establishing teams of qualified lead and
3 co-counsel for death penalty cases, as well as conducting
4 or sponsoring specialized training programs for attorneys
5 representing persons who may be executed.

6 If a capital murder case proceeds to trial and a notice of
7 intent to seek the death penalty has been filed, in addition to
8 any other defenses which may be presented to the charge, the
9 defendant may raise the issue of intellectual disability or
10 mental illness during the time of filing pretrial motions.

11 Once the evidence is submitted to the jury, the court
12 will instruct the jury, at the defendant's request, that in
13 considering whether a sentence of death is justified, the
14 race, color, religious beliefs, national origin, sex, or other
15 protected classes under Code chapter 216 of the defendant or
16 of any victim is not to be considered. The supreme court
17 shall collect evidence relating to whether the death sentences
18 imposed are excessive, disproportionate, or imposed under the
19 influence of prejudice at trial which will be available to
20 litigants.

21 The sentence of death is imposed only when the trier of fact
22 (the jury or the court if the defendant has waived the right to
23 a jury trial) unanimously answers two questions affirmatively:
24 (1) whether aggravating circumstances established beyond a
25 reasonable doubt outweigh any mitigating circumstances that
26 may exist; and (2) whether the defendant should be sentenced
27 to death. Mitigating factors the trier of fact may consider
28 include the following: whether the defendant was under the
29 influence of a mental illness; the age of the defendant;
30 the defendant's ability to appreciate the wrongfulness of
31 the conduct due to a mental illness but not to a degree to
32 constitute a defense; the defendant has no significant prior
33 criminal history; the defendant was under extreme duress;
34 the defendant did not directly commit the murder; and the
35 defendant's character or record or the circumstances of the

1 offense. The sentencing proceeding is conducted separately
2 from the finding of guilt or innocence by the same trier of
3 fact.

4 For the sentencing proceeding, the trier of fact (the jury
5 or the court if the defendant has waived the right to have
6 the jury hear the proceedings) is to weigh any aggravating
7 circumstances established beyond a reasonable doubt by the
8 state against any of the enumerated mitigating circumstances
9 which may be presented by the defendant. Evidence of certain
10 juvenile delinquency adjudications is not admissible in any
11 proceeding to determine the sentence. If the jury fails to
12 agree unanimously on the required affirmative findings, the
13 penalty imposed would be life imprisonment.

14 The death penalty sentence would be reviewed automatically
15 by the supreme court. The supreme court shall review the trial
16 and judgment separately from the sentencing proceeding. If the
17 supreme court finds error in the sentencing proceeding, the
18 supreme court may remand the case back to district court for a
19 new sentencing hearing. The bill requires the supreme court to
20 examine whether the sentence is excessive or disproportionate
21 to penalties in similar cases. If affirmed by the supreme
22 court, the penalty would be accomplished by lethal injection.
23 The bill requires the board of corrections to adopt rules
24 pertaining to executions, including rules pertaining to the
25 witnessing of executions.

26 A person who is sentenced to death, but who is pregnant when
27 the warrant of execution is issued, is not to be executed until
28 the person is no longer pregnant. A procedure is also provided
29 to stay execution of a condemned inmate who becomes mentally
30 ill after conviction but before execution.

31 An employee of the state shall not be required to perform or
32 assist in any execution and shall not be discriminated against
33 for refusing to participate.

34 The bill may include a state mandate as defined in Code
35 section 25B.3. The bill makes inapplicable Code section 25B.2,

1 subsection 3, which would relieve a political subdivision from
2 complying with a state mandate if funding for the cost of
3 the state mandate is not provided or specified. Therefore,
4 political subdivisions are required to comply with any state
5 mandate included in the bill.

6 The bill contains severability provisions and takes effect
7 January 1, 2024, and applies only to offenses committed on or
8 after that date.